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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 DYLAN CORRAL,	} Case No. 2:23-cv-05402-CAS-JDE } ORDER TO SHOW CAUSE WHY } THIS ACTION SHOULD NOT BE } DISMISSED UNDER 28 U.S.C. } § 1915(g)
12 Plaintiff,	
13 v.	
14 JOHN/JANE DOES 1-5000,	
15 Defendants.	
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18 On June 30, 2023, the Court received from Dylan Corral (“Plaintiff”), an
19 inmate or detainee at the Sacramento County Jail in Sacramento, California,
20 proceeding pro se and without paying a filing fee or seeking leave to proceed in
21 forma pauperis (“IFP”), a civil rights complaint under 42 U.S.C. § 1983
22 against unidentified Doe defendants based on events that allegedly occurred at
23 California State Prison, Los Angeles County (“LAC”) while Plaintiff was
24 incarcerated there in 2019. Dkt. 1 (“Complaint”).

25 Under 28 U.S.C. § 1915(g), a prisoner is prohibited from “bring[ing] a
26 civil action or appeal” IFP if the prisoner:

27 has, on 3 or more prior occasions, while incarcerated or detained
28 in any facility, brought an action or appeal in a court of the United

1 States that was dismissed on the grounds that it is frivolous,
 2 malicious, or fails to state a claim upon which relief may be
 3 granted, unless the prisoner is under imminent danger of serious
 4 physical injury.

5 Section 1915(g) “is commonly known as the ‘three strikes’ provision. ‘Strikes’
 6 are prior cases or appeals, brought while the plaintiff was a prisoner, which
 7 were dismissed ‘on the ground that[they were] frivolous, malicious, or fail[] to
 8 state a claim” Andrews v. King, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005)
 9 (as amended) (first two alterations in original). Section 1915(g) provides a
 10 narrow exception permitting a prisoner who has had three prior “strikes” but
 11 who is in “imminent danger of serious physical injury” to proceed despite the
 12 strikes. 28 U.S.C. § 1915(g); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th
 13 Cir. 2000) (en banc). The danger must exist at the time the prisoner filed the
 14 complaint, not at some earlier or later time. Andrews v. Cervantes, 493 F.3d
 15 1047, 1053 (9th Cir. 2007) (as amended).

16 Courts may raise Section 1915(g) sua sponte and dismiss the action after
 17 providing the plaintiff with an opportunity to be heard. See Andrews, 398 F.3d
 18 at 1120; see also Strobe v. Cummings, 653 F.3d 1271, 1273 (10th Cir. 2011)
 19 (courts “may raise the issue of strikes sua sponte”); Fabricant v. Harbison,
 20 2021 WL 5921470, at *2 (C.D. Cal. Sept. 1, 2021) (“Courts may raise
 21 § 1915(g) sua sponte.”), accepted by 2022 WL 103187 (C.D. Cal. Jan. 11,
 22 2022); Hernandez v. Ventura Cty., 2010 WL 5313476, at *2 (C.D. Cal. Nov.
 23 16, 2010) (“Courts may, sua sponte, dismiss an action that is barred by Section
 24 1915(g), but must notify the prisoner/litigant of the strikes it considers to
 25 support such a dismissal, and allow the prisoner an opportunity to be heard on
 26 the matter before dismissing the case.”), adopted by 2010 WL 5315438 (C.D.
 27 Cal. Dec. 15, 2010). Once the court notifies a plaintiff that his case may be
 28 subject to dismissal under Section 1915(g), the plaintiff bears the ultimate

burden of persuading the court that Section 1915(g) does not apply. Andrews, 398 F.3d at 1120. “A dismissal under Section 1915(g) is without prejudice to a plaintiff refiling his civil rights complaint after prepayment of the full filing fee.” Hernandez, 2010 WL 5313476, at *2.

Here, although the Court makes no current findings, the docket of other courts, of which this Court takes judicial notice, appear to reflect at least three prior civil actions filed by Plaintiff while incarcerated that resulted in dismissal for being frivolous, malicious, or failing to state a claim upon which relief may be granted:

1. Dylan Corral v. Lt. Bouldin, et al., No. 2:18-cv-1629-TLN-CKD (E.D. Cal. Jan. 13, 2020) (Dkt. 36, 37) (dismissing Plaintiff’s second amended complaint for “failure to state a claim upon which relief can be granted”).
2. Dylan Corral v. Cpl. Sullivan, No. 2:18-cv-01843-KJM-CKD (E.D. Cal. Mar. 17, 2020) (Dkt. 32, 33) (dismissing Plaintiff’s second amended complaint for “failure to state a claim upon which relief can be granted”).
3. Dylan Corral v. Corporal Martinez, et al., No. 2:19-cv-00859-JAM-KJN (E.D. Cal. July 27, 2020) (Dkt. 9, 21-24) (dismissing complaint for failure to state “a potentially colorable due process claim”).¹


¹ The district court affirmed the magistrate judge’s dismissal of Plaintiff’s complaint, granting leave to amend by a certain date, (see Case No. 2:19-cv-00859-JAM-KJN, Dkt. 9, 21), but Plaintiff did not do so. See Harris v. Mangum, 863 F.3d 1133, 1143 (9th Cir. 2017) (holding that “when (1) a district court dismisses a complaint on the ground that it fails to state a claim, (2) the court grants leave to amend, and (3) the plaintiff then fails to file an amended complaint, the dismissal counts as a strike under Section 1915(g)”).

1 As it appears that Plaintiff, a “prisoner,” has had at least three prior civil
2 actions he commenced as a prisoner dismissed as frivolous, malicious, or for
3 failing to state a claim upon which relief may be granted, it appears this action
4 is subject to dismissal under 28 U.S.C. § 1915(g). Further, as Plaintiff is no
5 longer housed at LAC, he is not currently under imminent danger of serious
6 physical injury stemming from the allegations in the Complaint.

7 Accordingly, Plaintiff is ORDERED TO SHOW CAUSE why this
8 action should not be dismissed on the grounds that he has suffered three or
9 more “strikes” within the meaning of 28 U.S.C. § 1915(g) and has not
10 plausibly alleged that he is currently under imminent danger of serious
11 physical injury. **Within twenty-one (21) days of this Order**, Plaintiff shall file
12 a written response setting forth any legal or factual basis why this action should
13 not be dismissed under 28 U.S.C. § 1915(g). In the alternative, Plaintiff may
14 avoid dismissal by paying the full filing fee within this deadline.

15 The Court warns Plaintiff that failure to timely respond as directed in
16 this Order may result in the dismissal of this action.

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18 Dated: July 10, 2023

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21 JOHN D. EARLY
22 United States Magistrate Judge
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